

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Arreaga	Team: Squad #2	CCRB Case #: 201602469	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/21/2016 8:57 PM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 9/21/2017	EO SOL 9/21/2017	
Date/Time CV Reported Thu, 03/24/2016 10:00 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/24/2016 10:00 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Omar Habib	00748	942899	040 PCT
2. POM Donald Sehl	02712	951232	040 PCT
3. POM Christophe Crain	03856	933719	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Romaine Wilson	00910	949804	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Omar Habib	Abuse: Police Officer Omar Habib stopped § 87(2)(b)	§ 87(2)(b)
B.POM Donald Sehl	Abuse: Police Officer Donald Sehl stopped § 87(2)(b)	§ 87(2)(b)
C.POM Donald Sehl	Abuse: Police Officer Donald Sehl frisked § 87(2)(b)	§ 87(2)(b)
D.POM Omar Habib	Abuse: Police Officer Omar Habib issued a summons to § 87(2)(b)	§ 87(2)(b)
E.POM Omar Habib	Abuse: Police Officer Omar Habib refused to provide his name and/or shield number to § 87(2)(b)	§ 87(2)(b)
F.POM Christophe Crain	Abuse: Police Officer Christopher Crain refused to provide his name and/or shield number to § 87(2)(b)	§ 87(2)(b)

### Case Summary

On March 21, 2016, at approximately 8:57 p.m., Police Officer Omar Habib and Police Officer Donald Sehl of the 40<sup>th</sup> Precinct stopped § 87(2)(b) in front of the Deli and Grocery located at § 87(2)(b) in the Bronx (**Allegations A and B**). Police Officer Sehl frisked § 87(2)(b)'s bag (**Allegation C**). Police Officer Habib issued a summons to § 87(2)(b) for blocking pedestrian traffic (**Allegation D**). Police Officer Habib allegedly refused to provide his name and shield to § 87(2)(b) (**Allegation E**). Police Officer Christopher Crain of the 40<sup>th</sup> Precinct allegedly refused to provide his name and shield to § 87(2)(b) (**Allegation F**). § 87(2)(b) was issued summons #§ 87(2)(b) for blocking pedestrian traffic (Board Review 01). § 87(2)(b) was issued summons #§ 87(2)(b) for possessing an open container (Board Review 02).

Video footage was provided by § 87(2)(b) who obtained the video footage from the exterior camera of the Deli and Grocery and recorded the entire incident on his cellphone. The entire video can be viewed in IA#31 (Board Review 03). Relevant clips have been attached in the relevant portions of the Findings and Recommendations Section below.

### Mediation, Civil and Criminal Histories

- Mediation was offered to but rejected by § 87(2)(b) because he wanted an investigation.
- As of May 9, 2016, § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim regarding this incident (Board Review 04).

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§ 87(2)(b)

### Civilian and Officer CCRB Histories

- § 87(2)(b) has been involved in one previous CCRB complaint, case #200205309, which was closed as complainant uncooperative (Board Review 07).
- § 87(2)(b) has no previous CCRB complaints.
- Police Officer Sehl has been a member of the NYPD for four years and has had 12 allegations in five cases with three substantiated allegations in two cases. In CCRB case #201302532, allegations of stop and frisk were substantiated against Police Officer Sehl and he received instructions. In CCRB case #201404440, a frisk allegation was substantiated against Police Officer Sehl and he received formalized training (see officer history). § 87(2)(g)
- Police Officer Habib has been a member of the NYPD for nine years and has had two allegations in one case with one substantiated allegation. In CCRB case #200914909, a force allegation was substantiated against Police Officer Habib and he received a discipline of 35 lost vacation days and five days suspension (see officer history). § 87(2)(g)
- Police Officer Crain has been a member of the NYPD for 16 years and has had 15 allegations in six cases with no substantiated allegations (see officer history). § 87(2)(g)

### Potential Issues

- § 87(2)(b) stated that § 87(2)(b) was homeless and that he could not provide any contact information for him. He stated that § 87(2)(b) usually loitered in front of the Deli and Grocery where the incident occurred. A NYC Department of Correction search was conducted revealing that § 87(2)(b) was incarcerated. He was, however, released before the date on which a video teleconference with him could be scheduled to take place. The undersigned conducted field work on two separate occasions to try to locate § 87(2)(b) at the Deli and Grocery. § 87(2)(b) however, was not at the location on either occasion. § 87(2)(b) provided the contact information for § 87(2)(b), a friend of § 87(2)(b). § 87(2)(b) was contacted and she stated that she had not seen § 87(2)(b) in several weeks. § 87(2)(b) provided the contact number for § 87(2)(b) sister § 87(2)(b). § 87(2)(b) was contacted and she stated she had not spoken to § 87(2)(b) and could not provide any contact information for him. § 87(2)(b)

§ 87(2)(b) The undersigned was unable to obtain a statement from § 87(2)(b) regarding this incident.

### Findings and Recommendations

#### Allegations not pleaded

- **Stop and Search:** It is undisputed that § 87(2)(b) was drinking from an open beer bottle in front of the Deli and Grocery located at § 87(2)(b) in the Bronx. All parties interviewed, including video footage, corroborated that § 87(2)(b) was drinking from an open container, before and after the arrival of the officers. Police Officer Sehl issued § 87(2)(b) a summons for open container. Therefore, allegations were not pleaded regarding the stop of § 87(2)(b) and the search of the plastic bag into which he placed his bottle of alcohol.

**Allegation A – Abuse of Authority: Police Officer Omar Habib stopped § 87(2)(b)**

**Allegation B – Abuse of Authority: Police Officer Donald Sehl stopped § 87(2)(b)**

**Allegation C – Abuse of Authority: Police Officer Donald Sehl frisked § 87(2)(b)**

**Allegation D – Abuse of Authority: Police Officer Omar Habib issued a summons to § 87(2)(b)**

§ 87(2)(b) filed his initial complaint with the CCRB via telephone on March 24, 2016, and provided a phone statement on March 29, 2016 (Board Review 08). On March 31, 2016, § 87(2)(b) was interviewed at the CCRB. On April 18, 2016, Police Officer Habib and Police Officer Sehl were interviewed at the CCRB. On April 28, 2016, Police Officer Crain and Police Officer Romaine Wilson were interviewed at the CCRB.

§ 87(2)(b) stated that he and § 87(2)(b) were standing in front of the Deli and Grocery smoking cigarettes. Approximately five minutes later, four officers in an unmarked vehicle double parked in front of the store. Police Officer Habib and Police Officer Sehl exited the vehicle and approached § 87(2)(b) and § 87(2)(b). Police Officer Crain and Police Officer Wilson exited as well but stood behind the other officers. Police Officer Habib told § 87(2)(b) that he had observed him drinking for the past half hour. § 87(2)(b) had a black bag

around his wrist which contained a pack of cigarettes and a cellphone charger. Police Officer Sehl frisked § 87(2)(b)'s bag by patting the bag in a clapping motion.

Video footage obtained from the incident location shows that § 87(2)(b) was standing to the right side of the entry door of the deli and § 87(2)(b) was standing to the right of § 87(2)(b). As Police Officer Habib and Police Officer Sehl approached § 87(2)(b) and § 87(2)(b), Police Officer Sehl can be seen patting down § 87(2)(b)'s bag in a clapping motion. Police Officer Crain can be seen opening the Deli and Grocery door entrance with no problem.



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Furthermore, as the incident progresses, officers and civilians can be seen entering and exiting the deli without issue while § 87(2)(b) remains at his initial position beside the door.



201602469\_20160519\_1231\_DM.mp4

Police Officer Habib stated that he had observed § 87(2)(b) and § 87(2)(b) standing in front of the deli entrance and saw § 87(2)(b) drinking from a 40oz. container of beer. He did not observe § 87(2)(b) drinking from the beer bottle. Police Officer Habib approached § 87(2)(b) and asked him to provide his identification. Police Officer Habib told § 87(2)(b) that both he and § 87(2)(b) were blocking the deli entrance and § 87(2)(b) was drinking from an open container.

Police Officer Habib stated that § 87(2)(b) was standing directly in front of the deli entrance blocking civilians from entering or exiting the deli but that no officer asked § 87(2)(b) to move from the doorway entrance at any point during the entire incident. Police Officer Habib issued a disorderly conduct summons for blocking pedestrian traffic to § 87(2)(b). After he was shown video footage showing that § 87(2)(b) was not standing in front of the deli's doors, Police Officer Habib acknowledged that § 87(2)(b) was not standing directly in front of the door but stated that if someone attempted to open the door it would not have fully opened since § 87(2)(b) was standing right at the door. He acknowledged that at no point in the video did he observe § 87(2)(b)'s presence preventing an individual from entering the doorway of the deli.

Police Officer Habib stated that he never searched any civilian's belongings and he never observed any other officer do so. After he was shown video footage, Police Officer Habib stated that he did not recall seeing Police Officer Sehl search § 87(2)(b)'s bag or § 87(2)(b)'s bag.

Police Officer Sehl stated that while he was inside the moving unmarked vehicle, he observed § 87(2)(b) drinking from a beer bottle. He informed the operator, who pulled over in front of the deli and Police Officer Sehl proceeded to approach § 87(2)(b). Police Officer Sehl initially stated that, aside from § 87(2)(b) he did not recall if there were any additional civilians on scene. However, after he was shown the video footage, Police Officer Sehl confirmed that he was the officer who patted down § 87(2)(b)'s bag, though he still did not independently remember doing so. The possible reason he provided for patting down the bag was "just in case,

you never know what's inside a bag nowadays.” He did not provide a reason to suspect the presence of any specific contraband in § 87(2)(b)'s bag and could not provide a physical description of the bag aside from that it appeared heavy.

Police Officer Wilson stated that § 87(2)(b) was not standing in front of the store in a location where he would have been blocking the store entrance.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he obstructs vehicular or pedestrian traffic. New York Penal Law 240.20(5) (Board Review 09). An officer may stop a person when the officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor. People v. De Debour, 40 N.Y.2d 210, 233 (1976) (Board Review 10). An individual's mere presence in the company of another person whom the police have justification to stop or probable cause to arrest does not create a reasonable suspicion to justify a stop of the individual. People v. McLoyd, 35 Misc. 3d 822 (2012) (Board Review 12).

In order to frisk a person, an officer must have reasonable suspicion that the person is armed. Debour.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation E – Abuse of Authority: Police Officer Omar Habib refused to provide his name and/or shield number to § 87(2)(b)**

During his initial CCRB complaint, § 87(2)(b) stated that, after he requested Police

Officer Habib's name, Police Officer Habib told him that his name was written on the summons. § 87(2)(b) however, could only partly read the name. § 87(2)(b) correctly read Police Officer Habib's Tax ID number as 942899 and stated that the name appeared to be "Hagir" or "Hasir."

During his verified statement, § 87(2)(b) stated that after Police Officer Habib handed him the summons, Police Officer Habib walked towards the unmarked police vehicle. § 87(2)(b) walked behind Police Officer Habib and asked him to provide his name and shield number. Police Officer Habib did not respond and made no indication that he had heard § 87(2)(b)'s request.

Police Officer Habib acknowledged that after giving the summons to § 87(2)(b) asked him to provide his name and shield. Police Officer Habib verbally provided his name to § 87(2)(b) and indicated to him that it was written on the summons.

Patrol Guide Procedure 203-09 states that a uniformed member of service must courteously and clearly state his/her rank, name, shield number and command, or otherwise provide them, to anyone who requests (Board Review 13).

§ 87(2)(b), § 87(2)(g)

**Allegation F – Abuse of Authority: Police Officer Christopher Crain refused to provide his name and/or shield number to § 87(2)(b)**

§ 87(2)(b) stated that as he was standing next to the unmarked police vehicle he asked Police Officer Crain to identify the name of the officer who had issued him the summons. Police Officer Crain replied that he would find out in court. Police Officer Crain then went inside of the vehicle sitting in the front passenger's seat. § 87(2)(b) spoke to Police Officer Crain through the open passenger's side window and asked him to provide his name and shield. Police Officer Crain replied, "Yeah right" and rolled up the window without providing his name and shield to § 87(2)(b).

Police Officer Crain stated that he did not hear any civilian ask him to provide his name and shield and he did not refuse to provide it. Police Officer Sehl, Police Officer Habib, and Police Officer Wilson all stated that they did not hear any civilian ask Police Officer Crain to provide his name or shield and did not hear any officer refuse to provide this information.

§ 87(2)(b), § 87(2)(g)

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Squad: 2

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date